S.B. CIVIL MISC. APPEAL NO. 1088/2007
(United India Insurance Co. Ltd. Vs. Soma Ram & Ors.)

Date of Order :: 4th April 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K. Mehta, for the appellant.

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By way of this appeal, the insurer of the vehicle involved in accident seeks to question the award dated 26.09.2006 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.14/2001 awarding compensation in the sum of Rs.3,47,000/- to the children of the vehicular accident victim Nenu Bai, in relation to the finding on issue No.3 whereby the Tribunal has rejected its contention for exoneration on the ground of violation of policy condition because the driver of offending vehicle was not holding valid driving licence; and in relation to the finding on issue No.2 on quantification of compensation.

On 05.04.2000, the victim Nenu Bai, about 50 years of age, while travelling from Balana to Takhatgarh in a tempo-trax bearing registration No. RJ22 T 0446 received fatal injuries when the vehicle plunged into a ditch down the road. Her husband (since deceased) and six children, aged 20 to 5 years, sought compensation against the driver, owners and insurer of the said tempo-trax and submitted that the deceased

was earning about Rs.1,200/- as a labourer and another Rs.18,000/- per annum in agriculture and cattle farming. The owners and driver of the vehicle resisted the claim application with the averments, inter alia, that the accident occurred for sudden burst of tyre and the vehicle going out of control. The quantum of compensation claimed was also put to contention. The insurer of vehicle, while again stating denial of claim averments submitted, inter alia, that the driver was not holding valid and effective driving licence to drive the vehicle in question and that the vehicle was being plied in violation of policy conditions.

After framing of necessary issues and taking evidence led by the parties, the Tribunal found the accident causing fatal injuries to Nenu Bai having occurred for rash and negligent driving of the aforesaid vehicle. While considering submission of the insurer for its exoneration in issue No.3 the Tribunal observed, with reference to the evidence produced on record that the driver Sultan Singh was holding a licence (Ex.10) to drive Light Motor Vehicle and the vehicle in question was answering to the definition of Light Motor Vehicle. The Tribunal also referred to the statement of insurer's witness NAW-1 Dilip Gupta that no further inquiry was made from the RTO Office regarding the licence in question. The Tribunal, accordingly, held that driver was holding a valid driving licence and contention of the insurer to the contrary could not be

accepted. On quantification, the Tribunal put an estimate on the monthly income of the deceased at Rs.3,000/-; and deducting one-third wherefrom took loss of dependency of the claimants at Rs.2,000/- per month i.e., Rs.24,000/-per annum; and in view of the age of the deceased at about 50 years, applied a multiplier of 13 to assess pecuniary loss at Rs.3,12,000/-. The Tribunal further allowed Rs.30,000/- towards non-pecuniary loss and Rs.5,000/- towards funeral expenses and in this manner allowed compensation in the sum of Rs.3,47,000/- and also allowed interest at the rate of 6% per annum.

Assailing the award aforesaid, learned counsel appearing for the appellant-insurer strenuously contended that the driver having been authorised only to drive Light Motor Vehicle was not authorised to drive a transport vehicle that was a public service vehicle; that a person holding a licence to drive Light Motor Vehicle cannot be permitted to drive a public service vehicle; and violation of policy conditions in the present case is established by the driving licence produced on record. Learned counsel referred to the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Kusum Rai and others: (2006) 4 SCC 250 to submit that violation of policy conditions by driving of the vehicle by a person not holding a valid driving licence is a defence that could be raised by the insurer and it was the duty of the owner

to verify before handing over the vehicle the fact as to whether the driver possesses valid driving licence or not. Learned counsel further contended that in the fact situation of the present case, the estimate as put by the Tribunal on monthly income of the deceased at Rs.3,000/- remains on the higher side and the compensation thus awarded in the sum of Rs.3,47,000/- remains excessive.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the impugned award, this Court is clearly of opinion that this appeal remains bereft of substance and does not merit admission.

The hyper-technical contentions sought to be urged by the insurer of the category of the vehicles have no bearing on the questions involved in the case for it does not appear that the insurer has led any evidence answering to the requirements of law as laid down and explained by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Ors. : (2004) 3 SCC 297 that,-

> "110 (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the

> insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

and further requiring that,-

> "110 (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence (s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

There is nothing on record to establish that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the policy conditions regarding use of the vehicle by a duly licenced driver or by a person who was not disqualified to drive such vehicle. The Tribunal has noticed the statement of the witness produced by the insurer that he did not inquire about the licence from the concerning transport office. Further, there is no evidence to suggest that want of such licence or endorsement of a particular kind of Light Motor Vehicle in the licence of the said driver was the main or contributory cause to the accident. In this view of the matter, it cannot be said that the insurer has been able to establish the conditions requisite for its exoneration; and mere suggestion of the category of vehicle the driver was authorised to drive is not

sufficient to hold that the owner of the vehicle is guilty of breach of policy conditions.

The Hon'ble Supreme Court has not stated the law in Kusum Rai in any terms different from the law declared in Swarn Singh's case and other directions were issued only in view of peculiar facts and circumstances of the case. The observations in Kusum Rai's case that owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not have no application to the facts of the present case inasmuch as such a question upon and in relation to the owner would have arisen only if the appellant-insurer had discharged its initial burden of establishing want of reasonable care and of breach on the part of insured. The initial burden having not been discharged, the contentions sought to be raised by the learned counsel are of little avail.

Even on merits, the submission does not appear carrying any substance. The driver was holding licence to drive a Light Motor Vehicle and it cannot be said that the tempo-trax in question was not a Light Motor Vehicle. Whether it was a transport vehicle or otherwise would have no bearing so far policy condition of driving by a valid driving licence holder is concerned, in view of comprehensive definition of Light Motor Vehicle as contained in Section 2(21) of the Motor Vehicles Act,1988; and in any case, the insurer

cannot be permitted to avoid its liability under the insurance policy with reference to such superficial and hyper-technical suggestions about the category of vehicle.

So far the quantum is concerned, on the whole an award in the sum of Rs.3,47,000/- for six children, four of them minors, towards compensation on account of accidental death of their mother, about 50 years in age, cannot be said to be exorbitant so as to warrant interference in appeal at the instance of the insurer. The estimate put by the Tribunal on monthly loss of contribution from the deceased in the sum of Rs.2,000/- per month is not excessive in the fact situation of the present case. In view of the age of the victim and the claimants, application of multiplier of 13 is also justified; and the amount of general damages does also not appear exorbitant. There appears no scope to interfere with the award in question at the instance of the appellant-insurer.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/